IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

RCRev..No. 142 of 2005(C)

RCA.155/1997 of DISTRICT COURT, THALASSERY
RCP.82/1996 of ADDL.MUNSIFF COURT, KANNUR
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PETITIONERS/APPELLANTS/PETITIONERS:
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1. HARI TIMBERS AND STEELS, THROUGH ITS MANAGER, KOLLADIKKAL KUNHIRAMAN NAMABIAR, S/O.PARVATHI AMMA, AGED 59 YEARS, BUSINESS, VALAPATTANAM AMSOM DESOM.

2. K.SATHEEDEVI, W/O.KUNHIRAMAN NAMBIAR, OWNER HARI TIMBERS AND STEELS, VALAPATTANAM AMSOM DESOM.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENT: RESPONDENT/PETITIONER:

KOOLEM CHEDERAKATH SUBAIDA, D/O.MOIDEEN, AGED 41 YEARS, NO OCCUPATION, K.C.HOUSE, MANNA, VALAPATTANAM.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 8 /2/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &ANTONY DOMINIC, JJ.

RCR No.142 of 2005

Dated this the 8th day of February, 2007

J U D G M E N T

ANTONY DOMINIC, J.

The tenant in a Rent Control Proceedings is the revision petitioner herein. The proceedings were initiated by the landlord under Section 11 (3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 and bona fide need projected was the requirement of a son, for conducting timber and building materials in the scheduled rooms. The tenant having failed at the original proceedings and at the appellate stage has come up in revision. A contention was raised relying on Section 11 (9) of the Act on the basis that the agreed period of tenancy was not over. Even according to the tenant, the agreed period of lease was over in the year 2000 and therefore this contention does not survive for consideration any more. As far as the contention against the bona fide need of the landlord is

concerned that having been concurrently found against the tenant nothing warranting a review of this finding is pointed out.

2. The only other ground urged is that in 2001 a commercial complex has been constructed by the landlord and it is stated that her son, for whose occupation eviction was sought, has already commenced a business in the new building. This contention has been disputed by the landlord by filing counter. The tenant is urging this contention by producing a letter from the Secretary of the Valapattanam Grama Panchayat and also three photographs in support of his contention. We are not inclined to entertain this contention. First and foremost reason is that in a case where bona fide need is urged, the point of time with reference to which the same is to be assessed is the date of presentation of the petition. As already noted, even according to the tenant, building was constructed only in the year 2001, whereas the proceedings were initiated in 1996. The landlord cannot be expected to sit idle awaiting the termination of the proceedings

and if the landlord chooses to establish venture in the meanwhile that cannot be faulted and the claim for eviction cannot be negatived on that ground. Counsel for the tenant is justified in relying on the decision in the case of **Korah Abraham Vs. Varughis** **[** 2004 (2) KLT 192] and it is his contention that this court is competent to examine subsequent developments. But for the reason that the tenant could have urged this contention at the appellate stage and as the relevant point of time with reference to which the bona fide need is to be assessed is the date of presentation of the petition, the contention of the tenant cannot be accepted. For these reasons, we are not inclined to interfere with the concurrent findings of the Rent Control Court as also of the Appellate Authority and the revision petition is dismissed.

3. The counsel for the tenant made a request for time for surrendering vacant possession of the building and this was agreeable to the counsel for the tenant. Accordingly,the tenant is given six months time to surrender vacant possession of the building on condition that he files an affidavit before the

execution court undertaking to surrender vacant possession on the expiry of six months from today. It is also directed that the tenant shall be liable to pay arrears of rent, if any, as also future rent. The affidavit shall be filed within three weeks from today.

The revision petition is disposed of as above.

ABDUL GAFOOR,
JUDGE.

ANTONY DOMINIC,
JUDGE.

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JUDGMENT

21st DECEMBER, 2006